

No. 19-1413

**IN THE UNITED STATES COURT OF APPEALS  
FOR THE TENTH CIRCUIT**

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303 CREATIVE LLC and LORIE SMITH,

*Plaintiffs-Appellants,*

v.

AUBREY ELENIS, et al.,

*Defendants-Appellees,*

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On Appeal from the United States District Court  
For the District of Colorado  
The Honorable Chief Judge Marcia S. Krieger  
Case No. 1:16-cv-02372-MSK

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**BRIEF OF *AMICUS CURIAE* CENTER FOR RELIGIOUS EXPRESSION  
IN SUPPORT OF APPELLANTS AND REVERSAL OF  
DECISION BELOW**

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## CORPORATE DISCLOSURE STATEMENT

Pursuant to FED. R. APP. P. 29(a)(4)(A) *Amicus Curiae* Center for Religious Expression states that it has no parent corporation and issues no stock.

Dated January 29, 2020

/s/Nathan W. Kellum  
Nathan W. Kellum  
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## INTEREST OF *AMICUS CURIAE*

*Amicus Curiae* Center for Religious Expression (“CRE”) is a national non-profit legal organization based in Memphis, Tennessee. Its mission is to defend the Christian voice and conscience, representing legal interests of individuals and businesses in federal and state courts all over the country, including Colorado and other states within the jurisdiction of the Tenth Circuit. *Amicus* is very interested in the outcome of this appeal due to its mission as well as its firm conviction that no one should ever be forced to write, publish, or otherwise create messages they cannot support in good conscience.

In accordance with [FED. R. APP. P. 29\(a\)](#), *Amicus* attests that all parties have consented to the filing of this brief.

### **FED. R. APP. P. 29(A)(4)(E) STATEMENT**

No party or party’s counsel participated in, or provided financial support for, the preparation and filing of this brief, nor has any entity other than *amicus* and its counsel participated in or provided financial support for the brief.

### **INTRODUCTION**

As an integral aspect of the constitutional right to free speech in the First Amendment, we all enjoy autonomy over the words we use. *Wooley v. Maynard*, [430 U.S. 705, 714](#) (1977). Thus, website professionals, like Lorie Smith

(hereinafter “Lorie”),<sup>1</sup> should never be made to design, write and publish messages violative of their own consciences.

Colorado encroaches on this first freedom, demanding Lorie employ her artistic talents to create and convey messages she would rather not communicate. Denigrating Lorie’s religious belief as a base desire to “discriminate against same-sex couples,” Colorado reckons Lorie must forego her constitutional freedoms to conduct business in today’s marketplace. (App. 2–454-456). But this entry-level cost is too high, barred under the First Amendment. Antidiscrimination laws, no matter how noble their goal, cannot be exploited to make a citizen use her own words to work against her own conscience. *See Hurley v. Irish-Am. Gay, Lesbian & Bisexual Grp. of Boston*, [515 U.S. 557, 573, 578](#) (1995) (invalidating application of antidiscrimination law to compel inclusion of pro-LGBT message in privately-run parade).

While this and other courts must initially gage whether an expressive activity intends to convey an idea and thus qualifies as speech meriting protection, *see, e.g., Cressman v. Thompson*, [719 F.3d 1139, 1149](#) (10th Cir. 2013), no such evaluation is needed here, with Lorie contemplating words as her chosen means of communication. Under any set of circumstances, words classify as pure speech.

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<sup>1</sup> Because briefing identifies Appellants collectively as “Lorie”, *Amicus* adopts the same reference to avoid any possible confusion.

*Bigelow v. Virginia*, 421 U.S. 809, 817 (1975). Virtually all courts recognize that government entities cannot compel citizens to speak words against their will. And hardly anyone quarrels with this well-established understanding. No one has to say what she does not want to say.

## ARGUMENT

### **I. Selection and Writing of Words is Pure Speech and Can Not be Compelled by the State**

Selecting and writing particular words and messages is an obvious form of pure speech. *Bigelow*, 421 U.S. at 817. A government entity targets pure speech – and not conduct – when “[t]he only ‘conduct’ which the State [seeks] to punish is the fact of communication [or refusal to do so].” *Cohen v. California*, 403 U.S. 15, 18 (1971). *See Bartnicki v. Vopper*, 532 U.S. 514, 526-27 & n. 11 (2001) (holding that law restricted “pure speech” where “what gave rise to statutory liability in this suit was the information communicated”). Colorado crosses this forbidden line in threatening to punish Lorie for her website messaging.

As Colorado concedes, Lorie is willing to serve anyone, regardless of race or sexual orientation or any other type of classification. She will gladly create custom graphics and websites for clients or organizations identifying as LGBT. (App. 2–322, ¶¶ 64-65). But Lorie is not willing to design, create, or publish content, and specifically words, for LGBT clients or anyone else that convey messages flouting her earnestly held religious beliefs – including messages that promote marriages

other than a marriage between one man and one woman. (App. 2–323, ¶ 66).

Invoking Colorado’s Anti-Discrimination Act (CADA) against Lorie, the State equates her reticence to communicate disagreeable messages with a “refus[al] to serve persons based on their sexual orientation,” dubbing her pure speech as illegal conduct. (App. 2–441).<sup>2</sup> Colorado demands Lorie compose and write words celebrating same-sex marriage just as she would articulate in celebrating an opposite-sex marriage, regardless of her convictions on the matter, labelling her refusal to do so “discriminat[ion] against same-sex couples.” (App. 2–456).

In way of support, Colorado considers this compulsion acceptable in the business context, and not subject to free speech protections, akin to the requirement to provide a university room that was upheld in *Rumsfeld v. Forum for Academic & Institutional Rights, Inc.*, [547 U.S. 47](#) (2006). (App. 2–441-444). But this analogy is amiss, for several reasons.

The notion that Lorie’s expressive creations are fungible services or “conduct,” like supplying space, is factually inaccurate. All of Lorie’s websites are expressive in nature and convey a unique message through words and other media. (See App. 2–320-325, ¶¶ 46-47, 59, 63, 78-79, 81-82). Lorie exercises significant editorial oversight and control in selecting the commissions she accepts,

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<sup>2</sup> The district court below held Lorie’s desired refusal to speak is made illegal by CADA. (App. 3–756).

developing the messages she creates, putting together the designs she uses, and choosing the words she employs, all in consideration of how she can best promote the event or topic of the website. (App. 2–321-323, ¶¶ 51-59, 68-69). Pressganging such discretion to cause Lorie to convey a message she does not support is the very abuse the compelled speech doctrine is supposed to prevent. *Wooley*, 430 U.S. at 714.

Moreover, a message celebrating an opposite-sex wedding is inherently different from one celebrating a same-sex wedding, because the events themselves are different. *See Brush & Nib Studio, LC v. City of Phoenix*, 448 P.3d 890, 909-10 (Ariz. 2019) (rejecting argument that artists’ custom wedding invitations were “fungible products, like a hamburger or a pair of shoes,” because “even one word or brush stroke can change [their] entire meaning”). Colorado insinuates that the two types of weddings are essentially the same with interchangeable parts. But Lorie does not share this perspective. And the compelled speech doctrine forbids the government from forcing Lorie to adopt the government’s point of view and facilitate messages consistent with it. *See Hurley*, 515 U.S. at 574, 579 (noting a speaker has the right to determine what “merits celebration” and the First Amendment has “no more certain antithesis” than government prescribing that determination for them).

For these reasons, *Rumsfeld* lends no support to Colorado’s position. The

mandatory provision held constitutional in *Rumsfeld* did not compel the law schools to produce words celebrating or approving the military, its policies, its recruitment efforts, or its presence on campus. 547 U.S. at 62, 65.<sup>3</sup> *Rumsfeld* only required the provision of a room for interviews. *Id.* at 60, 66. In contrast, Colorado demands Lorie custom design and write words sponsoring ideas that conflict with her conscience. (App. 2–454-456). The burden imposed on Lorie “amounts to nothing less than a proposal to limit speech in the service of orthodox expression.” *Hurley*, 515 U.S. at 579.

Unlike *Rumsfeld*, Colorado regulates pure speech, not conduct. This is the distinction between requiring words and requiring a room. *See Anderson v. City of Hermosa Beach*, 621 F.3d 1051, 1062 (9th Cir. 2010) (“[T]he processes of writing words...[and] painting a picture are purely expressive activities...”). The presence of an antidiscrimination law does not transform involuntary words into conduct. *See Telescope Media Grp. v. Lucero*, 936 F.3d 740, 752 (8th Cir. 2019) (rejecting argument that public accommodation’s production and editing of wedding videos was mere conduct under antidiscrimination law, commenting, “[s]peech is not

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<sup>3</sup> The law schools’ argument in *Rumsfeld* was that by providing access (through a room) to military recruiters they would be perceived as endorsing military policies. 547 U.S. at 64-65. The discrimination analog of such a “guilt-by-association” theory would be an unwillingness of Lorie to sell products or services to certain persons because the sale would send an implicit message endorsing the customer’s lifestyle and status. However, Lorie provides all services to all persons regardless of status; she is only selective in the events and topics she chooses to promote through words. (App. 2–322-323, ¶¶ 64-69).

conduct just because the government says it is.”); *see also Hurley*, [515 U.S. at 572-73](#), [578](#) (application of antidiscrimination law unjustifiably compelled speech, despite law’s purpose to prevent conduct of discriminating). Nor do words turn into conduct when they are sold for profit. *See Telescope Media Grp.*, [936 F.3d at 751](#) (speech did not become conduct merely because it was produced through for-profit enterprise); *Brush & Nib Studio*, [448 P.3d at 907-08](#) (for-profit sale of custom-designed wedding invitations did not render them mere “business activit[y]”); *see also Joseph Burstyn, Inc. v. Wilson*, [343 U.S. 495, 501](#) (1952) (for-profit nature of motion pictures did not strip them of First Amendment protection).

Given the undeniably expressive nature of Lorie’s words, the unconstitutionality of compelling them is evident. Colorado wrongly treats Lorie’s communication as a public accommodation itself, contorting an antidiscrimination law to contravene the doctrine of compelled speech. *See Hurley*, [515 U.S. at 573](#) (application of law improperly treated parade – speech itself – as public accommodation). And the upshot is egregious. Lorie need not sell her soul to sell her words. *See Miami Herald Pub. Co. v. Tornillo*, [418 U.S. 241, 258](#) (1974) (newspaper company has First Amendment right to refuse to publish political candidate’s response to criticism published in the company’s newspaper). Lorie’s heart, mind, and speech are her own, not “a passive receptacle or conduit” for Colorado or anyone else. *Tornillo*, [418 U.S. at 258](#).

## II. All Justices in the *Masterpiece Cakeshop* Decision Unanimously Recognized Words Cannot be Compelled

In *Masterpiece Cakeshop v. Colorado Civil Rights Commission*, the Supreme Court considered a like matter, deciding whether Colorado could require a cake artist named Jack Phillips (Phillips) to create custom wedding cakes designed to celebrate same-sex marriages. [138 S.Ct. 1719, 1724](#) (2018). Much like Lorie, Phillips was happy to sell his pastry creations to anyone willing to buy them, regardless of status, but he did not want to custom design cakes promoting events and causes that contradicted his religious beliefs, a position that found him at odds with Colorado's application of CADA. *Id.* Phillips argued that custom-design wedding cakes for same-sex unions promoted and celebrated a type of marriage that went against his faith. *Id.* And he consequently declined to design and prepare a cake for a same-sex wedding for a requesting couple, without entertaining any particular written inscription on it. *Id.*

The Colorado Civil Rights Commission punished Phillips for his decision, and the matter eventually came to the U.S. Supreme Court, where Phillips urged his rights to free speech and free exercise of religion. *Id.* at 1725-27. One issue before the Court was whether the act of baking a cake (as contrasted with writing words on the cake) qualified as speech for First Amendment purposes. *Id.* at 1723. Ultimately, the Supreme Court passed on the free speech question, ruling the pervasive hostility shown by the Colorado Civil Rights Commission toward

Phillips' religious beliefs in adjudicating his case violated his free exercise of religion. *Id.* at 1732. Yet, a review of each opinion in the *Masterpiece Cakeshop* decision reveals that every participating justice recognizes that antidiscrimination laws cannot be invoked to compel words.

The Majority opinion, written by Justice Kennedy and joined by Chief Justice Roberts and Justices Breyer, Alito, Kagan, and Gorsuch, noted that the free speech question was a difficult one in the context of Phillips' refusal because no inscription was envisioned for the cake. *Id.* at 1723-24. The Court contrasted Phillips' refusal with a refusal to "design a special cake with words or images celebrating the marriage," observing those "details might make a difference." *Id.* at 1723. The underlying assumption of the Majority was that a compulsion to inscribe words celebrating a particular marriage is clearly violative of free speech, whereas compelling the design of a cake without words posed a closer question. The Court cemented this thought in analyzing the William Jack cases, where three bakers refused requests to bake cakes with specific words and images criticizing same-sex marriage that each baker found offensive. *Id.* at 1730. Analogizing those cases to Phillips' case, the Court found the Commission's inconsistent treatment signaled religious discrimination against Phillips "quite apart from whether the cases should ultimately be distinguished." *Id.* The Court left open the question of whether a cake design without words could be compelled, while

acknowledging that written words and messages cannot be.

Justice Kagan, joined by Justice Breyer, wrote a separate concurrence that stressed this very distinction. *Id.* at 1732-33. They opined that it is “obvious[ly]” proper to distinguish between declining to make a cake without words versus declining to make a cake with words. *Id.* at 1733. Justice Kagan wrote that the bakers in the William Jack cases could not have violated the law because they refused to “make a cake (one [with words] denigrating gay people and same-sex marriage) that they would not have made for any customer.” *Id.* Though William Jack was refused the service he requested, Justices Kagan and Breyer understood that the bakers had a right to avoid construction of words expressing a message they opposed.

Justice Gorsuch, joined by Justice Alito, separately concurred as well and shared the same view on words, albeit from a dissimilar perspective. *Id.* at 1738. These two justices concluded that a custom-designed wedding cake for a same-sex wedding necessarily celebrated the union. *Id.* at 1738. Accordingly, they opined that the bakers in both the William Jack cases and Phillips should be equally free to decline an offer to produce a product that “advance[d] a message they deemed offensive.” *Id.* at 1738-39. Thus, while Justice Gorsuch’s opinion took issue with much of Justice Kagan’s, they found common ground in their agreement that citizens should not be forced to convey and present words they oppose.

Justice Thomas, joined by Justice Gorsuch, also concurred with the result of the Majority, but directly considered Phillips' free speech claim, deeming the issue too important to ignore. *Id.* at 1740. They found a custom-designed wedding cake, even one without words, expressive, communicating “a wedding has occurred, a marriage has begun, and the couple should be celebrated.” *Id.* at 1742-43 & n. 2. Figuring “the Constitution looks beyond written or spoken words as mediums of expression,” Justice Thomas implicitly recognized that written words are even clearer examples of speech than “expressive conduct,” and cannot be compelled. *Id.* at 1742.

Finally, Justices Ginsburg and Sotomayor dissented on the basis that they did not perceive a free exercise violation. *Id.* at 1748. Like Justice Kagan espoused, these justices believed it appropriate for the bakers in the William Jack cases to decline the requests based on their opposition to the requested wording. *Id.* at 1749. The justices noted that, by declining to generate a written message the bakers would not make “for any customer,” they treated William Jack like anyone else – “no better, no worse.” *Id.* at 1750. Justices Ginsburg and Sotomayor contrasted this arrangement from the Phillips' case because his refusal went beyond written messages. *Id.*

Despite significant disagreements between members of the Court on the issues before them in *Masterpiece Cakeshop*, every single justice agreed that

citizens cannot be forced to write words they oppose. This common thread, representing unanimous reasoning from the Supreme Court, supports Lorie’s position in this case. Colorado cannot punish Lorie for abiding by her conscience in refusing to create and convey words on websites that commend same-sex marriage. The issue is all but decided by the Supreme Court.<sup>4</sup>

### **III. A Wide Consensus Concurrs that Words Cannot be Compelled under Antidiscrimination Law Rationale**

A wide consensus also recognizes that antidiscrimination laws cannot, consistent with the First Amendment, compel written words and messages.

#### **A. Parties and *Amici* Opposing Phillips in *Masterpiece Cakeshop***

In *Masterpiece Cakeshop*, the ACLU, representing the same-sex couple, argued that the bakers in the William Jack cases should be exonerated (while simultaneously castigating Phillips) on the basis that a business owner’s decision to not write messages he would not write for anyone else is a valid practice. As they stated in their brief, it is not unlawful to “adopt[] policies that apply equally to all customers (for example, ‘*We won’t write this message for anyone*’).” Brief for

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<sup>4</sup> This issue as it relates to words was not foreign to the justices in *Masterpiece Cakeshop*. Colorado specifically argued that it was constitutionally appropriate for the State to enforce CADA to make Phillips equally inscribe “congratulatory text” on his cakes upon request. Brief for Respondent Colorado Civil Rights Commission at 24-25, *Masterpiece Cakeshop v. Colorado Civil Rights Commission*, 138 S.Ct. 1719, available at <http://www.scotusblog.com/case-files/cases/masterpiece-cakeshop-ltd-v-colorado-civil-rights-commn/>. The Court’s unanimous rejection of this notion is all the more telling.

Respondents Charlie Craig and David Mullins at 26, *Masterpiece Cakeshop v. Colorado Civil Rights Commission*, [138 S.Ct. 1719](#) (emphasis added), available at <http://www.scotusblog.com/case-files/cases/masterpiece-cakeshop-ltd-v-colorado-civil-rights-commn/>.

*Amici curiae* in support of the Respondents in *Masterpiece Cakeshop* echoed this idea. For example, the twenty (20) States that believed Jack Phillips should be punished explained that a business owner may properly decline to make products that include a written inscription because then it would be clear that the refusal is not “because of” the status of the customer. See, e.g., Brief of Massachusetts et al. as *Amici Curiae* in support of Respondents at 28, *Masterpiece Cakeshop v. Colorado Civil Rights Commission*, 138 S.Ct. 1719, available at <http://www.scotusblog.com/case-files/cases/masterpiece-cakeshop-ltd-v-colorado-civil-rights-commn/>. The 211 members of Congress who opposed Phillips and Masterpiece Cakeshop contended likewise, asserting “businesses are free to adopt neutral and generally applicable terms-of-service policies. For example, a business could adopt a terms-of-service policy refusing to sell products containing hate speech.” Brief of 211 Members of Congress as *Amici Curiae* in support of Respondents at 23 n.6, *Masterpiece Cakeshop v. Colorado Civil Rights Commission*, [138 S.Ct. 1719](#), available at <http://www.scotusblog.com/case-files/cases/masterpiece-cakeshop-ltd-v-colorado-civil-rights-commn/>.

Additionally, thirteen (13) First Amendment scholars who filed an amicus brief against Phillips expounded on their agreement with this principle:

Had Masterpiece refused service because of a disagreement over the actual cake design, and if state law gave customers a right to sue in such circumstances, that hypothetical case might raise serious First Amendment questions about the extent to which the law may compel the actual content of a baker's artistic expression.

Brief of First Amendment Scholars as *Amici Curiae* in support of Respondents at 28, *Masterpiece Cakeshop v. Colorado Civil Rights Commission*, [138 S.Ct. 1719](https://www.supremecourt.gov/opinions/18-591), available at <http://www.scotusblog.com/case-files/cases/masterpiece-cakeshop-ltd-v-colorado-civil-rights-commn/>. Correspondingly, another group of free speech scholars opposing Phillips wrote that “serious constitutional questions would be raised if [a nondiscrimination] statute compelled a baker to affix an offensive message to a cake he or she was asked to bake.” Brief for Freedom of Speech Scholars as *Amici Curiae* supporting Respondents at 8, *Masterpiece Cakeshop v. Colorado Civil Rights Commission*, 138 S.Ct. 1719, available at <http://www.scotusblog.com/case-files/cases/masterpiece-cakeshop-ltd-v-colorado-civil-rights-commn/>. And, likewise, the National League of Cities, an advocate for municipalities throughout the United States, distinguished the scenario in *Masterpiece Cakeshop* from a case where a printer was scrutinized for declining to print a message promoting a gay pride festival because in Phillips' case “[n]o actual images, words, or design celebrating same-sex marriage or the rights of

LGBT individuals were ever at issue.” *Amici Curiae* Brief of the National League of Cities in support of Respondents at 1, 27, *Masterpiece Cakeshop v. Colorado Civil Rights Commission*, 138 S.Ct. 1719, available at <http://www.scotusblog.com/case-files/cases/masterpiece-cakeshop-ltd-v-colorado-civil-rights-commn/>.

The *Masterpiece Cakeshop* case had numerous parties and varied interests that weighed in on the matter, generating an unusually large number of *amici*, totaling 95 for both sides. See <http://www.scotusblog.com/case-files/cases/masterpiece-cakeshop-ltd-v-colorado-civil-rights-commn/>. And yet, virtually everyone involved in the *Masterpiece Cakeshop* case recognized that words cannot be compelled to ensure compliance with an antidiscrimination law.

## **B. Other Authorities**

*Masterpiece Cakeshop* and those involved in it are not the only ones to recognize this principle. For example, the state court and those appearing in *State v. Arlene’s Flowers, Inc.*, [389 P.3d 543](#) (Wash. 2017), a case concerning an antidiscrimination claim brought against a florist who declined a customer’s request to design floral arrangement for his same-sex wedding, voiced matching sentiment. At oral argument before the Washington Supreme Court, the attorney representing the same-sex couple contrasted a floral arrangement with work of a professional advertiser, explaining that if an advertiser was asked to “say certain

words endorsing a certain message” and the advertiser “refuse[s] to say those words regardless of who asks him, whether the person is straight or gay, it’s not discrimination based on sexual orientation.” Video of Oral Argument at 49:56-50:41, *State v. Arlene’s Flowers, Inc.*, 389 P.3d 543 (Wash. 2017), available at <https://www.youtube.com/watch?v=bOV2--oey6o>. And, in ruling against the florist, the state high court relied on the distinction between a floral arrangement and words, depicting the latter as “forms of pure expression that are entitled to full First Amendment protection.” 389 P.3d at 559 & n.13 (quotation omitted), *vacated and remanded for reconsideration in light of Masterpiece Cakeshop*, 138 S.Ct. 2671 (2018).<sup>5</sup>

An alike distinction was observed by the Oregon Court of Appeals in *Klein v. Oregon Bureau of Labor and Industry*, a case, similar to *Masterpiece Cakeshop*, dealing with cake shop owners who were sued for declining to create a wedding cake for a same-sex wedding. 410 P.3d 1051 (Or. Ct. App. 2017) *vacated and remanded for reconsideration in light of Masterpiece Cakeshop*, 139 S.Ct. 2713

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<sup>5</sup> On remand from the United States Supreme Court, the Washington Supreme Court found no religious hostility similar to that exhibited by Colorado and re-adopted its prior opinion. *State v. Arlene’s Flowers, Inc.*, 441 P.3d 1203 (Wash. 2019). A petition for certiorari from this decision has been filed. See Pet. For Cert., *Arlene’s Flowers, Inc. v. Washington, et al.*, 19-333, available at <https://www.scotusblog.com/case-files/cases/arlenes-flowers-inc-v-washington-2/>.

(2019).<sup>6</sup> There, the state appellate court ruled against the cake shop, finding especially relevant the cake shop had not been “asked to articulate, host, or accommodate a specific message that [the owners] found offensive.” *Id.* at 539.

The court carefully distinguished the case from one concerning words, explaining:

It would be a different case if [the government’s] order had awarded damages against the Kleins for refusing to decorate a cake with a specific message requested by a customer (“God Bless This Marriage,” for example) that they found offensive or contrary to their beliefs. [Citing *Masterpiece Cakeshop* and distinguishing the William Jack cakes].

*Id.* at 539-40. The *Klein* court understood that a compulsion of specific words and messages would run afoul of the compelled speech doctrine. *Id.* at 537.

In line with this thinking, in the recent *Brush & Nib Studio* case, the Supreme Court of Arizona held a public accommodations law could not be enforced to make an art studio handwrite and paint custom wedding invitations containing words and images celebrating same-sex weddings. [448 P.3d at 915-916](#). So holding, the court emphasized how the creation of words constituted pure speech – not mere conduct or business activity – that could not be properly subject to compulsion, referencing *Arlene’s Flowers* and *Klein* as authorities recognizing this difference. *Id.* at 905-06, 917. Elaborating on the effort and time the studio spent exercising artistic judgment in selecting, designing, and handwriting the

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<sup>6</sup> Reconsideration of the case is currently pending before the Oregon Court of Appeals.

celebratory words they placed on their custom wedding invitations, the court deemed the word-related activity the essence of pure speech that could not be compelled simply because the resulting product is sold for profit. *Id.* at 908-910, 917.

Resounding a nearly universal principle, these courts and others concur that selecting and composing written messages is pure speech that cannot be rightly compelled by the State. This Court should join the chorus.

### CONCLUSION

For the reasons set out herein and in Appellants' briefing, *Amicus* asks this Court to reverse the decision of the district court below, restoring the First Amendment freedom to avoid compelled utterance of words.

Respectfully submitted,

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### **CERTIFICATE OF COMPLIANCE**

I hereby certify that this Brief of *Amicus Curiae* complies with the word limit of FED. R. APP. P. 29(a)(5) because, excluding the parts of the document exempted by FED. R. APP. P. 32(f), this document contains 4,014 words.

This document complies with the typeface requirements of FED. R. APP. P. 32(a)(5) and the type style requirements of FED. R. APP. P. 32(a)(6) because this document has been prepared in proportionately spaced 14-point Times New Roman typeface using Microsoft Word 2016.

/s/ NATHAN W. KELLUM  
Nathan W. Kellum

### **CERTIFICATE OF DIGITAL SUBMISSION**

I hereby certify that this Brief of *Amicus Curiae* complies with 10<sup>th</sup> Cir. R. 25.3, because all required privacy redactions have been made, hard copies of this brief being submitted to the clerk's office are exact copies of the ECF filing, the ECF submission was scanned for viruses with Comodo Antivirus 11, updated January 29, 2020, and the brief complies with applicable type volume limits.

/s/ NATHAN W. KELLUM

**CERTIFICATE OF SERVICE**

I hereby certify that on January 29, 2020, the foregoing will be served by the Clerk of Court for the United States Court of Appeals for the Tenth Circuit by using the appellate CM/ECF system. Participants in the case who are registered CM/ECF users will be served by the appellate CM/ECF system.

/s/ NATHAN W. KELLUM